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ABSTRACT

Unlike either secondary schools, in which tenure practices are established by law, or universities, in which tenure practices are patterned after policies of the American Association of University Professors, the community colleges abide by no uniform policy. This paper presents a model on which community colleges can base their tenure policy. The model outlines factors that should be specified in creating a tenure policy. They include the duration of a probationary period, duties of parties during a probationary period, and conditions required to end it. On the basis of interviews with community college faculty and administrators, and of reviews of court cases involving tenure, basic recommendations are presented to assist community colleges in establishing tenure policy. [Not available in hard copy due to marginal legibility of original document.] (RC)

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TOWARD DEVELOPMENT OF A MODEL FOR INSTRUCTOR TENURE IN THE COMMUNITY COLLEGE

by D. F. Corlett

In this presentation we shall look briefly at the concept of instructor tenure; at the unique role of the instructor in the comprehensive community college as we find it emerging today; and at some of the causes of tenure litigation which have come into the courts in recent years. Finally, we will identify some of the qualities of a tenure policy which will satisfy the needs of instructors, administrators, trustees, and students in community colleges.

INSTRUCTOR TENURE

As education of the young became the subject of public concern, there developed in each state a body of legislation governing the qualification and certification of instructors in the public schools. This development produced an occupational classification of instructor. That is, a person who was especially prepared to teach in the elementary and secondary school and who possessed only limited qualifications for other employment. A cadre of persons developed whose occupation was instruction in the public schools and who depended for their employment upon the continued availability of work in that field.

Continued work, however, often required satisfaction of local boards of education and other public officials as well as qualifying under state certification requirements. Frequently instructors found themselves subject to the vicissitudes of politically motivated persons. Also, while the demand for instructors was rather general throughout the country, it was a position which normally was filled in the fall of the year and additional vacan-

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cies did not occur until the following spring. In other words, an instructor who by chance found himself unemployed after the beginning of school was not likely to find satisfactory permanent employment again until the following fall. These two conditions led to all sorts of instructor anxieties regarding security of employment. It was to allay these anxieties that the concept of instructor tenure began to gain popularity.

In its simplest form, public school instructor tenure can be defined as the right of an instructor to be continuously employed after having satisfactorily completed a probationary period of employment. Discharge of tenured instructors can only be for cause and must be accomplished in a manner displaying legal due process. In the public secondary school sector, instructor tenure frequently became a matter of legislation since administration of the schools was legislatively directed.

At the University level, instructor tenure came about as a guarantee of academic freedom. Since research conducted in higher education, and methods used there, were frequently controversial, instructors in these institutions became understandibly concerned for employment security. It was realized early that in order for an instructor to be a change-agent, a moulder of ideas and ideaologies, he must be free of concern for continued employment. His term in office must be free of emotional influences which might be generated by his work. This was especially true in the publicly supported colleges and universities where control was frequently in the hands of officials who were popularly elected and thus especially vulnerable to the passions of the public. Instructor tenure in the colleges and universities took the form of the right of the instructor, after a probationary period, to conduct his teaching and research without fear of discharge or disciplinary action and with the assurance that discharge for cause would involve the judgement of his faculty peers.

Thus we see instructor anxiety at both the public school and the university level caused by the fear of unwarranted discharge. Reduced to the lowest common denominator, this was the cause for the development of instructor tenure in the secondary schools and universities.

THE COMMUNITY COLLEGE

Into this picture, in recent years, has come the comprehensive community college. This newcomer to the educational system might be personified as the offspring of a marriage between the university and secondary schools, possessing characteristics of

each but with a clearly definable personality of its own. It shares parts of the philosophy and mission of each, yet it provides a unique educational environment and the hope of a new approach to many of the problems of today's society.

Some of the problems which have been faced and resolved over the years by both the university and the secondary school are now causing concern for the community college. Solutions arrived at earlier for these more established institutions are frequently only partially applicable to the community college. This is the situation which applies in the area of instructor tenure.

In the secondary schools tenure is usually specified by law. At the university level tenure is most frequently a matter of policy patterned after the Principles of the American Association of University Professors. In the community college, however, no such uniformity exists. There are few states where community college instructors are covered by tenure laws. Where tenure policies exist they vary from institution to institution depending upon the experience and philosophy of the administration and faculty. When we add to this condition the fact that several organizations are competing for the community college instructor's membership, a potentially explosive situation exists. Almost without exception the organizations and associations to which instructors belong have, of recent years, been becoming increasingly militant and activist. In the struggle for membership these organizations have demonstrated a willingness to defend the community college instructor at any point at which he feels threatened. This is especially true, and is increasingly manifested, in the areas of employment security, freedom in the classroom, participation in all levels of decision making, and disciplinary action and discharge. It is the attempt to prevent precipitous action, with the resultant loss of opportunity to students and damage to the rapport between faculty and administration, which leads us to consider the development of a model for instructor tenure in the community college.

THE UNIQUE POSITION OF THE COMMUNITY COLLEGE INSTRUCTOR

The community college, characteristically, is a community-serving institution which has a strong emphasis on occupational education of a vocational or technical nature. Academic transfer programs are frequently designed as "pre-professional" programs, sometimes referred to as two-year terminal programs.

These are programs which attempt to prepare the student for gainful employment, usually in the vocational, technical and service occupations or for further study at the professional level. Thus they are frequently very pragmatic, the instruction is characterised by its practicality. An attempt is made to provide learning experiences in the very most up-to-date methods and techniques of business and industry. This points to one of the underlying differences between the instructor in the community college and his counterpart in either the public school or university. The community college instructor, by virtue of the pragmatic nature of his material, requires practical experience and employment in the field of his specialty. Further, the need for current knowledge requires that he be continually in touch with the occupations he represents in such a way as to reflect the newest techniques. That is to say, the instructor in the community college, may need periodic upgrading. Upgrading which may require off-campus employment for a short period in the area of his instructional specialty. It may be that the instructor will recognize his need for upgrading and attempt to impress his employer with this need. Or it may be that the employer will recognize the need first. In either case, the conventional concept of tenure does not make provision for employment security while allowing periodic short-term off-campus employment experience. It should not be necessary for a competent instructor to resign his job, thus losing his employment security and seniority, in order to gain current employment experience which he deems necessary to keep his instruction relevant. By the same token, it should not be necessary for an employer to terminate an experienced instructor, because his trade knowledge is out of date, when a few months in a local industry would give him the desired skill in new methods which he could then impart using the instructional skills so painstakingly acquired over the years.

The unique position of the community college instructor is that he must be able to come and go between the campus and employment in his specialty while still maintaining tenure in his instructional role. Obviously, there must be some mutually-agreed upon limits to this freedom, but it is manifestly in the best interest of the student, the administration, and the instructor to recognize this need.

COURT CASES INVOLVING TENURE

As might be expected, most tenure controversies which have come into court recently involved secondary schools. This was because tenure at that level is usually a matter of law while in

higher education is more frequently a matter of policy. Controversies at the higher levels more frequently involve "professional sanctions" rather than litigation. In studying these cases three classifications were used. The actions were divided according to (1) type of case, (2) causes of litigation, and (3) charges which resulted in dismissal.

Over 150 cases were reviewed, constituting every case on this subject in a court in the United States between 1959 and 1969.

Although discharge cases were the overwhelming majority, there were also cases concerned with involuntary transfer; involuntary resignation; involuntary retirement; leave or suspension; and abolishment of position. The adequacy of the charges and consideration of the rights of probationary instructors were the principle causes of litigation. Although many charges were made, the most frequent causes of discharge were immorality, impropriety, incompetence, insubordination, non-compliance with rules, other good cause (undefined), irremediable behavior and illegal appointment.

STRUCTURE OF THE MODEL

With the full realization that not nearly all the variables had been considered, but with the strong conviction that the effort expended in study would be worthless without an attempt to design a practical policy for tenure in the community college, the following elements were identified as the minimum essentials which must be considered.

Employee coverage

Specify the positions to be covered.

Differentiate between administrators, instructors, non-instructional professional staff, and clerical staff.

Duration of probationary period

Specify length of the probationary period in terms of either months, school terms, school years, or calendar years.

Specify if temporary or substitute experience may be counted.

Specify interruptions which will <u>not</u> destroy consecutiveness of probationary period.

Specify limits beyond which an interruption will destroy consecutiveness of period.

Duties of parties during probationary period

Instructor: Specify special duties resulting from probationary status.

Employer: Specify evaluation to be made during probationary period including frequency of evaluation.

Conditions required to end probationary status

Specify action required by employer to establish tenure relationship.

Specify procedure for dismissal of probationary instructor during school term, at end of school term, and at end of probationary period. Include timing of notification, notification of appeals possible, required degree of specificity of charges.

Contesting dismissal of probationary instructor

State what action may be taken, time limits within which action may be taken, and information to be given to the instructor pertaining to these rights.

Termination of tenure relationship

By instructor: Specify notice to be given, period for giving notification, penalty for not observing proper form.

By mutual consent: Specify conditions under which termination may be acceptable. Specify responsibility of each party to the other in cases of termination by consent.

By employer: Specify notice to be given, provision for prompt hearing, charges justifying dismissal, any other reason for terminating tenure relationship.

Disciplinary action other than dismissal

Specify causes which may justify disciplinary action.

Specify method of taking disciplinary action.

Specify appeal open to instructor.

Hearing

Specify membership of the hearing body.

Specify time limits within which hearing must be begun.

Specify right of accused, conformance to fundamentals of due process, degree of formality required.

Specify how costs of hearing are to be borne.

Provision for instructor up-grading

Specify right of instructor to up-grade at own request while retaining tenure.

Specify right of institution to require up-grading in order to retain tenure.

Specify length of off-the-job time for up-grading which will be allowed while retaining tenure.

Specify type of experience which will constitute acceptable up-grading.

RECOMMENDATIONS

In the course of this study, many persons were informally interviewed and many conversations were held. Almost invariably instructors made the point that their primary interest in a tenure policy was to protect themselves from arbitrary dismissal. While they agreed that a democratic administrator, who followed enlightened personnel practices, would not arbitrarily dismiss an instructor who could be made effective, most instructors felt that their supervisors either were not that democratic or were subject to pressures which might preclude uniform administration of dismissal policies.

Administrators, on the other hand, almost invariably complained that tenure policies tied their hands in dealing with marginal or weak instructors. While they admitted that, in theory, it was possible to dismiss an incompetent instructor who had attained tenure, most administrators admitted to knowing of a great many cases where it was just too much trouble to build a strong case against a marginal instructor. As a result, instructors with known limitations were retained.

Review of court cases bears out the fears and complaints of both groups. There clearly are some undemocratic administrators, and there are circumstances where pressures are brought to bear so that arbitrary decisions are made. It also is clearly indicated that a great deal of effort is required to prove that a tenured instructor is incompetent to continue teaching and that his incompetence is irremediable.

The basic precept of this study was that the tenure policy should serve the three-fold purpose of:

1. encouraging and retaining competent instructors,
2. helping to improve those instructors found to need strengthening,
3. identifying those who should be encouraged to leave the career field of teaching.

The tenure policy must protect instructors from arbitrary dismissal while at the same time providing a method for equitably discharging an instructor who either cannot or will not meet a reasonable level of effectiveness. This policy should be jointly developed and ratified by representatives of the faculty, administration, and governing body. It should be reviewed by representatives of these three bodies periodically to see if it is accomplishing its goal.

It should be apparent that such a policy would depend upon, and work only in conjunction with, an effective faculty evaluation procedure which takes into account the instructor's ability to motivate students and stimulate them to learn as well as his subject matter competence. A plan for systematic faculty evaluation should be a part of the tenure policy and should be strictly followed. Instructors should insist that periodic evaluation be conducted. This plan should include steps to be taken to improve the ability of either probationary or tenured instructors found to have limitations in any area. The final point in the proposed model is designed for this purpose.

It is implied that in making provision for instructor up-grading there would first be an effective evaluation procedure by means of which faculty limitations would be jointly identified. A plan would then be worked out by which the necessary new competencies could be acquired, and a mutually agreeable period of time would be determined for the instructor to be off-the-job while still retaining his tenure in the teaching position. In the event the need for up-grading was not mutually accepted, both the instructor and the insti-

tution must have the right to insist that it be carried out. The instructor must be able to retain his tenure during self-initiated up-grading, or the institution must be able to revoke tenure if an instructor refuses self-improvement after a reasonable notice period.

Although much of the above might be considered just good administrative procedure, there were numerous court cases which resulted from the oversight of just such points. Observing these points will certainly lessen the likelihood of having to resort to the courts to settle tenure disputes.

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